



REPUBLIC OF THE PHILIPPINES

CERTIFIED PHOTOCOPY

Sandiganbayan *Maria Lourdes M. Lobiano-Alviola*

Quezon City

ATTY. MARIA LOURDES M. LOBIANO-ALVIOLA  
Executive Clerk of Court II  
OCC Fourth Division, Sandiganbayan

FOURTH DIVISION

MINUTES of the proceedings held on 3 May 2019.

Present:

JUSTICE ALEX L. QUIROZ  
JUSTICE REYNALDO P. CRUZ  
JUSTICE BAYANI H. JACINTO

Chairperson  
Member  
Member

The following resolution was adopted:

SB-18-CRM-0469 to 0470 - PEOPLE v. ADOLPH EDWARD G. PLAZA ET AL.

This resolves the following:

1. *Explanation and Omnibus Motion*<sup>1</sup> dated 22 March 2019 filed by accused Adolph Edward G. Plaza;
2. *Omnibus Motion to Quash Information and to Dismiss the Malversation Case*<sup>2</sup> dated 22 March 2019 filed by accused Maximo M. Gegato, Jr., Niceto M. Ranario, Celsa S. Sanchez, and Pamela D. Yucosing (accused Gegato, Jr. et al.); and
3. *Compliance (Re: Show Cause Order on Suspension from Office)*<sup>3</sup> dated 4 April 2019 filed by accused Domingo M. Castro, Jr.

While accused Plaza and Castro's submissions seek to comply with the Court's 15 March 2019 Order for them to show cause why they should not be suspended *pendente lite*, they also pray for the quashal of one or both the *Informations* and, ultimately, the dismissal of the cases. Hence, the same shall be resolved jointly with accused Gegato, Jr., et al's *Omnibus Motion*.

<sup>1</sup> Records, Vol. IV, pp. 47-133

<sup>2</sup> *Id.*, pp. 46-A to 46-J

<sup>3</sup> *Id.*, pp. 171-180.

Accused Plaza prays for the following in his *Omnibus Motion*:

- (i) Hold in abeyance the issuance of a preventive suspension order pending the Supreme Court's resolution of his Petition and final determination of the validity of the criminal proceedings which led to the filing of the Informations in these cases; and
- (ii) Quash the Informations in these cases on the ground that the facts stated therein do not constitute the crimes of malversation and violation of Section 3(e), R.A. No. 3019, as amended.

Specific to the issue of suspension *pendente lite*, accused Plaza refers to *Miguel v. Sandiganbayan*<sup>4</sup> as basis for stating "that he has the right to challenge the validity of the information, including the: (a) validity of the criminal proceeding leading to the filing of an information against him, and (b) propriety of his prosecution on the ground that the acts charged do not constitute a violation of R.A. No. 3019, as amended, or of the provisions on bribery of the Revised Penal Code x x x."

He repeats that the preliminary investigation against him was attended by inordinate delay, in violation of his constitutional right to the speedy disposition of cases. He also points out that he has a Petition for *Certiorari*, assailing this Court's 7 September 2018 and 9 January 2019 Resolutions denying his *Motion to Dismiss* and *Motion for Reconsideration*, respectively, pending before the Supreme Court. On such basis, he prays that the issuance of a preventive suspension order be held in abeyance until the Supreme Court's resolution of his Petition.

As to his prayer to quash the *Informations*, he submits that the factual recitals therein fail to state with particularity the wrongful acts that constitute any violation of Section 3(e) of Republic Act (R.A.) No. 3019 in SB-18-CRM-0469 and who among the accused public officers had custody over the funds in SB-18-CRM-0470.

In this connection, he also claims that, citing *People v. Dimaano*,<sup>5</sup> he has not been sufficiently informed of the nature of the accusations against him absent the recital of the ultimate facts that constitute the violation of the law.

<sup>4</sup>G.R. No. 172035, 4 July 2012.

<sup>5</sup>G.R. No. 168168, 14 September 2005.

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Accused Plaza thereafter points out that in the administrative case that was filed against them in connection with the same acts subject of these criminal cases, the OMB held that the elements of corruption and willful intent to violate the law were absent.

Lastly, he states that while the *Informations* allege that the crimes were committed through conspiracy, they failed to state how he specifically conspired with the other accused, for which reason, the same should be quashed.

Accused Gegato, Jr. et al., on the other hand, argue that the allegations in the *Information* in SB-18-CRM-0470 fail to constitute an offense. They categorized the accused into two groups, with accused Plaza, Sanchez, and Cellan, Jr., constituting the first group, while accused Ronquillo, Natividad, Castro, Jr., Udad, Quiban, Yucosing, Gegato, Jr., and Ranario constitutes the second group.

For the first group of accused, they argue that the recital of the positions of the accused is merely descriptive and does not *ipso facto* constitute an allegation for malversation, given that it is not preceded by the phrase "taking, consenting, permitting or through abandonment or negligence x x x" They add that the statement "conspiring and confederating" is likewise not preceded by the allegation of the illegal act or omission. Hence, they conclude that the same has no basis.

For the second group of accused, they aver that "official position" pertains to the position that public officers hold *per* their *plaintilla* position, and that in the *Information* it was alleged that the accused committed the said acts in "such capacities while in the performance of their respective and/or official functions and committing the offense in relation to office taking advantage of their official positions." They submit, therefore, that said officials were "not accused in their designated positions, but in their respective official positions performing their administrative and official functions." They add that procurement is not part of the said accused's functions *per* the Local Government Code.

Accused Gegato, Jr., et al. thereafter state that the ultimate accusatory allegations in the *Information* are the accused's act of entering into a contract with Feshan and by causing or facilitating the release of PHP 9,908,100.00, which was under their custody, to the said entity. They thus maintain that the second element of malversation - "that [accused] has the

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custody and control of funds or property by reason of the duties of his office" – has not been satisfied.

In addition, they state that the inclusion of the phrase "through abandonment or negligence" when describing the manner by which the crime was committed negates the allegation of conspiracy.

Accused Castro, Jr., for his part, argues that a valid Information and a pre-suspension hearing are required prior to preventive suspension. In this connection, he claims that the *Informations* in these cases are invalid, and refers to accused Plaza's pending Petition for *Certiorari* before the Supreme Court and reiterates that in his own *Motion for Reconsideration* dated 29 October 2018,<sup>7</sup> he argues that fact-finding investigations should be deemed part of preliminary investigation and insists that there is inordinate delay in these cases.

Lastly, he states that the 90-day suspension is supposed to be preventive in nature, and it is unlikely that there would be any additional evidence that can be obtained by the OMB. He thus prays that the Court "1. DECLINE to suspend the accused; and 2. DISMISS the proceedings for violation of his right to the speedy disposition of cases."

In its *Consolidated Comment and/or Opposition* to accused Plaza and accused Gegato, Jr., et al.'s motions, the prosecution points out that the motions violate the Omnibus Motion Rule, considering that accused Plaza and Gegato, Jr., et al. have already previously filed their motions to dismiss on the ground of the alleged invalidity of the *Informations*.

The prosecution insists that the factual allegations in the *Informations* are sufficient. It argues that the *Information* for violation for Sec. 3(e) of R.A. No. 3019, clearly provides that –

x x x accused public officers in the discharge of their official functions, in conspiracy with one another, acting with manifest partiality, evident bad faith or gross inexcusable negligence, gave unwarranted benefit, advantage or preference to Peshan when they entered into a contract to purchase several bottles of fertilizers in the total amount of P9,908,100.00 despite irregularities and violations of the provisions of Republic Act No. 9184 to the damage and prejudice of the government.

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<sup>7</sup>Records, Vol. III, pp. 269-283.

For the *Information* for Malversation, the prosecution argues that —

x x x the Information alleged that accused Plaza, Sanchez, and Cellan, Jr., who are public officer and who by reason of their duties were accountable for public funds in the amount of P9,908,100.00, in conspiracy with the rest of the accused, have consented, permitted, or through abandonment or negligence, allowed Feshan to take or appropriate the said amount when they entered into a contract to purchase several bottles of fertilizers despite irregularities and violations of the provision of Republic Act No. 9184 to the damage and prejudice of the government.

Hence, on both counts, it contends that accused Plaza's and accused Gegato, Jr., et al.'s submissions are baseless.

### RULING

The motions for the quashal of the Informations and/or the dismissal of the cases are barred by the Omnibus Motion Rule.

All accused, save for accused Lapidez who remains at large, have already previously filed their respective motions to quash/motions to dismiss.

To recall, accused Plaza filed a *Motion to Dismiss*<sup>8</sup> dated 25 July 2018, while the rest of the accused (except accused Lapidez) filed their *Motion to Dismiss*<sup>9</sup> dated 7 August 2018. Said motions sought the dismissal of the cases on the ground of violation of their constitutional right to the speedy disposition of cases. The motions to dismiss were denied in the Court's 7 September 2018 Resolution.<sup>10</sup>

Accused Plaza filed a *Motion for Reconsideration*<sup>11</sup> dated 24 October 2018. The Court thereafter received the following motions: (i) *Motion for Reconsideration (Re: Resolution dated 07 September 2018)*<sup>13</sup> dated 30 October 2018 filed by accused Castro, Jr.; (ii) *Motion for Reconsideration of the September 9, 2018 Resolution*<sup>14</sup> dated 29 October 2018 filed by accused

<sup>8</sup> Records, Vol. II, pp. 507-523.

<sup>9</sup> *Id.*, pp. 524-534.

<sup>10</sup> Records, Vol. III, pp. 48-A to 48-I.

<sup>11</sup> *Id.*, pp. 247-263.

<sup>13</sup> *Id.*, pp. 269-283.

<sup>14</sup> *Id.*, pp. 284-301.

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Gegato, Jr., Ranario, Sanchez, Bustamante, Calang, Raro, and Yucosing; (iii) *Motion for Reconsideration*<sup>15</sup> dated 31 October 2018 filed by accused Ronquillo and Cellon; and, (iv) *Motion for Reconsideration*<sup>16</sup> dated 30 October 2018 filed by accused Udad, Quiban, and Natividad.

In their separate motions, accused argue that the Court erred in applying the cases of *Magante v. Sandiganbayan*<sup>17</sup> and *Cagang v. Sandiganbayan*<sup>18</sup> since the pronouncements therein should have been applied prospectively. They point out that the prevailing doctrines in resolving “inordinate delay” cases should be those of *Coscolluela v. Sandiganbayan*,<sup>19</sup> *Remulla v. Sandiganbayan*,<sup>20</sup> *Tatad v. Sandiganbayan*,<sup>21</sup> *Duterte v. Sandiganbayan*,<sup>22</sup> *Angchangco v. Ombudsman*,<sup>23</sup> and *Inocentes v. Sandiganbayan*.<sup>24</sup>

On 9 January 2018, the Court resolved to deny said motions for reconsideration.<sup>25</sup> Of the accused, only accused Plaza filed a Petition for *Certiorari* before the Supreme Court to assail the 7 September 2018 and 9 January 2019 Resolutions of the Court.

In other words, all accused, except Lapidez, have already previously sought the dismissal of the cases, and/or the quashal of the *Informations*. Per the “Omnibus Motion Rule” under Sec. 1, Rule 9 of the Rules of Court,<sup>26</sup> in relation to Sec. 8 of Rule 15<sup>27</sup> thereof, all defenses and objections that are already available must be raised in a given motion to dismiss. Unless the question raised by a party in a subsequent motion concerns the issue of jurisdiction over the subject matter, pendency of another action, or is barred by prior judgment or by the statute of limitations, the same is deemed waived and the subsequent motion must be denied.

<sup>15</sup> *Id.*, pp. 302-308.

<sup>16</sup> *Id.*, pp. 313-322.

<sup>17</sup> G.R. Nos. 230950-51, 23 July 2018.

<sup>18</sup> G.R. Nos. 206438, 206458 & 210141-42, 31 July 2018.

<sup>19</sup> G.R. No. 171411, 15 July 2013.

<sup>20</sup> G.R. No. 218040, 17 April 2017.

<sup>21</sup> G.R. No. 72335-39, 21 March 1988.

<sup>22</sup> G.R. No. 130191, 27 April 1998.

<sup>23</sup> G.R. No. 122728, 13 February 1997.

<sup>24</sup> G.R. Nos. 205963-64, 7 July 2016.

<sup>25</sup> Resolution 9 January 2018, Records, Vol. III, pp. 377-386.

<sup>26</sup> Which provides: “Section 1. Defenses and objections not pleaded. — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.”

<sup>27</sup> Which provides: “Sec. 8. Omnibus motion. — Subject to the provisions of Section 1 of Rule 9, a motion attacking a pleading, order, judgment, or proceeding shall include all objections then available, and all objections not so included shall be deemed waived.”

The import of the Omnibus Motion Rule was reiterated in *Pilipinas Shell Petroleum Corp. v. Romars International Gases Corp.*,<sup>28</sup> accordingly:

The omnibus motion rule embodied in Section 8, Rule 15, in relation to Section 1, Rule 9, demands that all available objections be included in a party's motion, otherwise, **said objections shall be deemed waived**; and, the only grounds the court could take cognizance of, even if not pleaded in said motion are: (a) **lack of jurisdiction over the subject matter**; (b) existence of another action pending between the same parties for the same cause; and (c) bar by prior judgment or by statute of limitations.<sup>29</sup> (emphasis in the original)

Clearly then, accused are barred from praying for the dismissal of the present cases based on objections to the validity of the *Informations* and the prayers for the dismissal of the cases are accordingly denied.

**Accused Plaza's Prayer to hold in abeyance the issuance of preventive suspension order.**

While the Court recognizes the principle of judicial courtesy, this is to be weighed against the directive of Sec. 7, Rule 65 of the Rules of Court, which plainly mandates that the filing of a petition under the same rule would not interrupt the course of the principal case unless a temporary restraining order or writ of preliminary injunction is issued against the respondent court for the said purpose.<sup>30</sup>

In these cases, a reasonable period has elapsed from the filing of accused Plaza's Petition for *Certiorari* on 11 February 2019 to date. However, no injunctive writ has been issued by the Supreme Court. As such, at this juncture the mere fact that the Petition is currently pending before the Supreme Court should not serve to delay the proceedings before this Court.

In addition, while it is true that the accused's Petition seeks to assail the validity of the *Informations*, and that question of whether the *Informations* are valid is one of the issues that may be raised in relation to the issuance of an order to suspend accused *pendente lite*, the relief in the

<sup>28</sup> G.R. No. 189669, 16 February 2015.

<sup>29</sup> *Spouses Anunciacion v. Bocanegra*, G.R. No. 152496, 30 July 2009.

<sup>30</sup> Said section reads: "SECTION 7. *Expediting proceedings; injunctive relief.* — The court in which the petition is filed may issue orders expediting the proceedings, and it may also grant a temporary restraining order or a writ of preliminary injunction for the preservation of the rights of the parties pending such proceedings. The petition shall not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction has been issued against the public respondent from further proceeding in the case."

former properly pertains to the dismissal or quashal of the Informations, while the instant issue merely concerns the preventive suspension required by law. It goes without saying that, as far as this Court is concerned, it may make a determination regarding the validity of the Informations, as it in fact did in its 7 September 2018 and 9 January 2019 Resolutions when it affirmed the validity of the Informations vis-à-vis accused's insistence that the OMB has been rid of its jurisdiction to file the same due to the violation of their right to speedy disposition of cases.

On the question of whether the preventive suspension of accused Plaza and Castro, Jr. is proper, Sec. 4, Rule VIII of the 2018 Revised Internal Rules of the Sandiganbayan<sup>32</sup> provides:

*Sec. 4. Suspension Pendente Lite.* – After the arraignment of an accused public officer against whom a valid information charging any of the violations referred to in Section 13 of R.A. No. 3019 is filed, the Sandiganbayan shall *motu proprio* give the said accused a non-extendible period of ten (10) calendar days from notice within which to explain in writing why he should not be preventively suspended. Thereafter, the Sandiganbayan shall issue an order of preventive suspension of the accused, if found warranted under the aforesaid provision of R.A. No. 3019, as well as applicable decisions of the Supreme Court.

The preventive suspension of a public official charged with violation of R.A. No. 3019 is mandatory under Sec. 13 of the law,<sup>33</sup> which clearly states that a public official shall be suspended from office pending a criminal prosecution under R.A. No. 3019 or Title 7, Book II of the Revised Penal Code, or for any offense involving public funds or property or fraud against the Government. This is ministerial upon the Court, even absent a motion from the prosecution praying for preventive suspension.<sup>34</sup> As such, the Court possesses no discretion to determine whether the issuance of an order for preventive suspension is necessary to forestall the possibility that the accused may use his or her office to intimidate witnesses, or frustrate his prosecution, or continue committing malfeasance. The presumption is that unless the accused is suspended, he or she may frustrate the prosecution of the case, commit further acts of malfeasance, or do both.<sup>35</sup>

<sup>32</sup> A.M. No. 13-7-03-SB.

<sup>33</sup> Which reads: "Section 13. *Suspension and loss of benefits.* Any public officer against whom any criminal prosecution under a valid information under this Act or under the provisions of the Revised Penal Code on bribery is pending in court, shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him."

<sup>34</sup> *Flores v. Layosa*, G.R. No. 154714, 12 August 2004.

<sup>35</sup> *Dela Cruz v. Sandiganbayan*, G.R. No. 161929, 8 December 2009, citing *Socrates v. Sandiganbayan*, G.R. Nos. 116259-60 and 118896-97, 20 February 1996.



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As to the duration of suspension, the Supreme Court has thus laid down the rule that preventive suspension may not exceed the maximum period of ninety (90) days, in consonance with *Presidential Decree No. 807*,<sup>36</sup> now Sec. 52 of the *Administrative Code of 1987*.<sup>37</sup>

Finally, it bears highlighting that Castro belatedly filed his *Compliance* and he included a prayer for the dismissal of the instant cases, but failed to properly set the same for hearing. Being an adversarial motion, it should have had a proper request and notice for hearing in accordance with Sec. 4, Rule 15 of the Rules of Court. On these counts, said motion should not even merit the consideration of the Court.

**WHEREFORE**, in view of the foregoing, the *Explanation and Omnibus Motion* dated 22 March 2019 filed by accused Adolph Edward G. Plaza, and *Omnibus Motion to Quash Information and to Dismiss the Malversation Case* dated 22 March 2019 filed by accused Maximo M. Gegato, Jr., Niceto M. Ranario, Celsa S. Sanchez, and Pamela D. Yucosing are **DENIED** for lack of merit. The *Compliance (Re: Show Cause Order on Suspension from Office)* dated 4 April 2019, filed by accused Domingo M. Castro, Jr. is **DENIED**, insofar as it prays for the dismissal of the cases, based on procedural and substantive grounds.

Accused **Adolph Edward G. Plaza** is hereby preventively suspended from his position as Provincial Governor of Agusan del Sur for a period of **ninety (90) days** from receipt of this Resolution. Accused **Domingo M. Castro, Jr.** is likewise preventively suspended from his position as Provincial Government Assistant Department Head for a period of **ninety (90) days** from receipt of this Resolution.

Let a copy of this Resolution be furnished the Secretary of the Department of Interior and Local Government for the implementation of the order of suspension of said accused. Said office is further requested to inform this Court of the date the accused started serving his suspension pendente lite and the date of its termination.

The suspension of the accused shall automatically be lifted upon expiration of the 90-day period from the implementation of this *Resolution*.

**SO ORDERED.**

<sup>36</sup> THE CIVIL SERVICE DECREE.

<sup>37</sup> *Layus v. Sandiganbayan*, G.R. No. 134272, 8 December 1999.

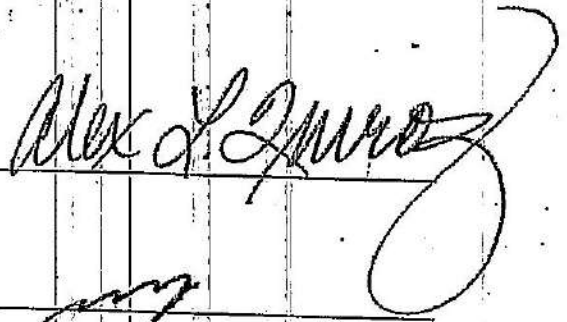
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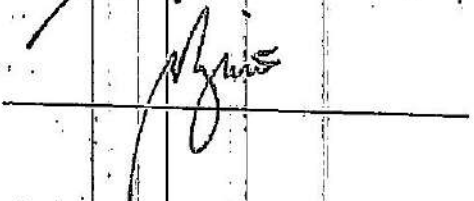
QUIROZ, J., Chairperson

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CRUZ, J.

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JACINTO, J.

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